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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,167

04/20/2005

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034299-631

8230

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10/06/2008

EXAMINER

CHONG, DAVID W

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

10/06/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,167	<b>Applicant(s)</b> LABEYE ET AL.	
	<b>Examiner</b> DAVID CHONG	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/20/05 and 6/05/06</u> .                                     | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Weisbuch et al. US 6,867,900.

3. Regarding claims 1, 4, and 5, Weisbuch teaches a device for testing at least one sample by optical detection of luminescence (see Fig. 5 and 6), comprising a site for receiving the sample (sample site 5), said site being arranged in such a way that the sample can receive a luminescence excitation and emit a luminescent light in an optical guiding plane of the device (guiding structure 14), the device further comprising collection means optically connected to the optical guiding plane for collecting the luminescence light (col. 14, lines 29-33), wherein the device further comprises, in the optical guiding plane, means making it possible to send back towards the collection means a part of the luminescence light emitted in the optical guiding plane and not directly collected by the collection means (planar resonator 12).

4. For claim 2, Weisbuch teaches that the means of detecting the luminescence light is arranged at the output of the collection means (col. 14 lines 29-33).

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5. For claim 3, the device of Weisbuch is formed on a substrate (col. 1 line 15), the optical guiding plane is a plane parallel to the substrate (Fig. 6, guiding structure 14) and the luminescence light detection means are arranged along a plane perpendicular to said plane parallel to the substrate (light is transmitted to the portion located above the surface, col. 12 lines 26-28).

6. For claim 6, Fig. 7 shows an embodiment of the invention where the photo-detecting elements 17 are on a wafer of the device on which said optical plane ends.

7. For claim 7, Weisbuch teaches an excitation light beam (col. 7 line 38) and where a filter is used with the collection means (col. 9 lines 41-47).

8. For claim 8, Weisbuch teaches several sample reception sites (col. 6 lines 12-13).

9. For claim 9, Fig. 6 shows a structure formed from a silicon substrate successively coated with a first layer of silicon oxide (Fig. 6 layer 2), a layer 14 acting as an optical guiding plane (Fig. 6 layer 14) and a second layer 16 in which is formed the site for receiving the sample (site 5).

10. For claims 10 and 11, the samples to be analyzed are nucleic acids (col. 7 line 22).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID CHONG whose telephone number is (571)270-3718. The examiner can normally be reached on Monday through Friday, 7:30 AM to 4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DC/

/Jill Warden/  
Supervisory Patent Examiner, Art Unit 1797